

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

[Petitioner] has multiple medical problems. He needs denture replacements as his lower one is broken in half and upper plate is broken and jagged - both causing gum irritation and placing him at risk for infection. But more importantly he is unable to chew food. (Petitioner) is on "Suboxone", a medication for his outpatient addiction program. Suboxone is protein based and [petitioner] is unable to eat which is decreasing his intake of protein and will decrease the absorption of Suboxone, which will put him at risk potential for

destabilization. He has done extremely well in [doctor's] Suboxone outpatient clinics, and he needs the full benefit of his medication. He needs to be able to properly masticate food (specifically protein, ie meat, chicken, fish, beef) to keep his protein levels stable. [Petitioner] is also hypothyroid and on medication to stabilize his metabolism. He will gain weight if he's unable to properly masticate his food. Also [petitioner] has chemotherapy for Hepatitis C and needs proper nutrition to maintain his remission of Hep. C.

2. On December 3, 2008 the Department issued a determination stating that the petitioner had not demonstrated that his nutritional needs could not be met through dietary choices and food preparation techniques.

3. Following the petitioner's appeal, the record was held open until March 13, 2009 to allow the petitioner's medical providers to respond to the Department's denial. To date, the only additional medical evidence submitted was a copy of consultative examination of the petitioner done in June 2004. This examination did not address the petitioner's dental problems.

4. Other than his ongoing treatment for substance addiction, none of the medical evidence alludes to any significant mental health problem. The petitioner maintains that he is self conscious and hesitant to go out in public due to the appearance of his teeth.

ORDER

The Department's decision is affirmed.

REASONS

As a cost-saving measure, the state has eliminated coverage of dentures for all adult Medicaid beneficiaries. W.A.M. § M621.6. However, OVHA has a procedure for requesting exceptions to its non-coverage, which requires the recipient to provide information about his or her situation and supporting documentation. M108. OVHA must then review the information in relation to a number of criteria as set forth below:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.

6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within the discretion of the Department and will not be overturned unless OVHA has clearly abused its discretion by either failing to consider and address all of the pertinent medical evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence. See, most recently, Fair Hearing No. 20,986.

The Board has also recognized the importance in M108 cases of distinguishing between physical and mental health issues. In this regard the Board has specifically ruled that as a general matter neither an inability to chew food nor problems with self-esteem and the ability to interact socially are "unique" medical problems sufficient to

establish "extenuating circumstances" for dentures within the meaning of the above provisions. *Id.*

The Board has specifically upheld the Department's denial of an M108 exception for dentures in cases where the petitioner did not demonstrate that the lack of teeth would likely result in serious detrimental health consequences given the apparent availability and appropriateness of alternative means of maintaining proper nutrition (i.e., alternative diet choices and eating pureed food). *Id.* In the instant case, the evidence submitted by the petitioner's medical providers simply does not establish that dentures are *required* to maintain his physical or mental health.¹

The petitioner is, of course, free to obtain a more detailed and thorough medical evaluation of his need for dentures. However, based on the evidence that has been submitted to date on the petitioner's behalf, it cannot be concluded that OVHA has abused its discretion in its assessment that the petitioner has not demonstrated that either his physical or mental health is likely to worsen significantly if he is not provided with dentures. In light

¹ Extraction of broken and jagged teeth is a covered service under Medicaid subject to an annual cap of \$495, unless it can be shown that such service constitutes emergency treatment.

of the above, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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